unfortunate feature of our public opinion in the decay of our ideal of political liberty, in the surrender of political power and the spirit of passive submission or indifference among the masses of our people. These are sacrifices to the golden calf. Public opinion "is moulded as never before by economic rather than by religious or moral or political considerations." As the acts repealing the English corn laws were passed solely "for the purpose of cheapening and enlarging the loaf," so is the world, and particularly America, "now governed mainly by ideas about the distribution of commodities." There can be little doubt about the correctness of this analysis. Private affairs are placed before politics, the individual before the public welfare by a large and, it seems, a growing class of Americans. Some readers will also agree with Mr. Godkin that the ultimate remedy is to be found in the referendum or some scheme of direct popular action in law-making. But meantime there are no signs of any such solution being adopted. The most decided difference of opinion exists with reference to the value of such a remedy. All present indications point rather to a further concentration of power in the hands of a few, not its return to the many. We are drifting toward a monocracy rather than a democracy. It is perhaps surprising that the author of "Unforeseen Tendencies" should mention this phenomenon yet lay no emphasis upon it. For many years the belief has been growing that in order to secure responsibility it is necessary to concentrate power; "we must trust some one" is a popular axiom in which the emphasis is being gradually laid on the "one." Collective bodies have become the object of deep mistrust. In order to secure a more complete responsibility on the side of the government we may choose one of two courses. Either we may discard the system of checks and balances by calling in a dictator or we may give back power and responsibility into the hands of the people by some plan of direct popular legislation. At present our desire for "a government without trouble" is rapidly leading us, not in the direction indicated by Mr. Godkin, but rather toward a dictatorship.

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Law and Politics in the Middle Ages. By EDWARD JENKS, M. A., Reader in English Law in the University of Oxford. Pp. 352. Price, $2.75. New York: Henry Holt & Co., 1898.

Despite Mr. Jenks' modest disclaimer of severe scholarship, this treatise must be looked upon as a substantial contribution to the none

too abundant work in English on legal and political origins. In a sense, it is suppletory to Pollock and Maitland's "History of English Law Before the Time of Edward I," although not professedly so. It deals with the legal and political structure, in the formative period of the Middle Ages, of the group of communities which now exercise a dominant influence in the civilization of the world. The aim of the work is to separate from the mass of mediæval history, those institutions and ideas which have proven themselves destined for the future and to distinguish them from the survivals which belong to the past. And in this regard, Mr. Jenks is inclined to take exception to the scholastic attitude which traces the abiding elements of Teutonic laws and institutions to the sway of Roman influence over men's minds, since he finds the state idea as well as the genesis of our politics and law to be largely, if not preponderatingly, of indigenous growth.

Necessarily, the kind of evidence open to this sort of a study is limited to the law itself. But not to law in the Austinian sense, and, for this reason, the author has been forced at the start to take issue with that school and show, that in genesis at least, and especially in the period covered by the book, law was something more and something entirely different from the arbitrary command of the state. It is "law as the record of human progress, as the golden deposit of the stream of Time" that the author portrays. And nowhere is this progress to be studied to better advantage or the historical method more serviceable than in the development of the common law of England. At the time of the Norman Conquest, legal institutions in England were most rudimentary. But the Normans soon changed this. The admirable organization of soldiers, ecclesiastics, jurists and administrators which William brought with him to England as his court, enabled him and his successors to impose his system on the local English customs and build up a unified and uniform system of law for the entire kingdom, in marked contrast to the chaos of local custom and feudal observances which prevailed on the continent and especially in France. This soon became in truth the law of the land, a *lex terrae*, rather than the law of the people, the customs and laws of the Mercians, Saxons, Danes and English being gradually fused into national form by the system of royal judiciary and circuit sittings inaugurated by the Normans.

But the law, even under Norman administration, is something far different than the supreme command of authority, for the common law, as declared by the Norman judges, was the law of the land which they found and collected and in time reduced to uniformity throughout the kingdom. It was custom, habit and the result of experience crystallized, as it were, which became law on being declared

to be such by the judiciary. This process was crowned by the work of Edward, through whom the common law or folk law, working toward unity through the courts, became national and at the same time the expressed will of all the estates of the realm.

On the continent, on the other hand, and especially in France and Germany, law was feudal, local, seignorial and royal. It did not become national. This localism in law was one of the main obstacles to the royal policy of the kings who were slowly developing the kingdom of France, and yet despite royal efforts law remained to a large degree local till the hand of the Revolution and the Code Napoléon unified it.

In Germany the evils of *partikularismus* are seen in a deeper political light. Here we find attempts being made from time to time in the fourteenth, fifteenth and sixteenth centuries to nationalize the law of the land, but to no purpose. Feudalism was too potent, and in the closing years of the fifteenth century German law lost its power in a national sense and submitted to the Roman law, and the *Corpus Juris Civilis* of Justinian became the law of the land as it did in Scotland. But not in the sense that the common law of England became the law of the land, for in Germany the law of the local communities developed side by side with its more imperial sister.

But this is only one phase of the evolution. For the growth of communal habit into binding custom, which doubtless proceeded in much the same way in its early stages in all Teutonic countries, was accompanied by a sort of royal legislation in the nature of administrative edicts and capitula, which later developed into legislative acts proper.

In his discussion of politics and the state, the author accepts the work of Sir Henry Maine and Fustel de Coulanges, but finds the beginnings of modern Teutonic political existence, for his purpose, in the gentile society of the clan. This, under the exigencies of war and the wanderings of the people, gives place by necessity to a closer bond of union for fighting purposes. The clan eventually disappears as a political force through the elevation of the war chief, by the leagues of the clans. It is such bodies of men who invade Italy and Britain. But the new organism is based on principles foreign to gentile selection, for, existing as it does for war and plunder, it seeks the war chief wherever he is to be found. Of this class are Childeric, Clovis, Alaric and others. And in course of time these league chieftains tend to become hereditary.

Military strength and skill in war are the qualities which now command respect, and such qualities lead eventually to the disappearance of the old blood nobility supplanted by a nobility of the sword

and office. By the time of Clovis the clan as a communal group in the *mund* of a common ancestor, and bound together by the rites of religion and kinship, has, in large measure, given way to a community of individuals united by military allegiance and the hope of conquest and plunder. Upon the vision of this horde came the spectacle of the Roman empire, which dazzled the eyes of Clovis and his successors, who proceeded to adopt its forms and vestments. The interval between the time of Clovis and Henry the Fowler is filled with the attempt of these people to live up to the forms and ceremonies of ancient Rome.

Disintegration followed the failure of the Franks to establish an empire on the ruins of Western Rome, and the fiefs, into which the empire divided, were a sort of revival of the clans, a reversion to an older type, whose members however were now settled and no longer roaming. From the ninth and tenth centuries on, we see the state idea again gaining on feudalism. William the Conqueror and his successors established it ready made in England. On the continent, however, progress was slower and never quite achieved its culmination until the present century.

The chapter of the work devoted to "The Administration of Justice" is a splendid statement of the growth of legal principles and legal procedure, the genesis of criminal law, the jury, and equity, subjects obscured in the mists of the ages preceding the Year Books. So also are the chapters on "Land Settlement and Local Units;" "Possession and Property" and "Caste and Contract."

The jury, according to the author, was not, as is popularly supposed, of popular character in origin, but something radically different. It came, in fact, from the Inquest, essentially a royal prerogative, exercisable by the courts neither of the clan nor the fief. William the Conqueror borrowed it from France and used it for the compilation of the Domesday, and Edward I. in collecting materials for the Hundred Rolls. And it remained a royal privilege to the last, but one which on the decay of trial by ordeal came to be sold to the private litigant. It failed to take root in Germany because of the weakness of the crown, in France because of the strength of the feudal officials and the Romanizing jurists, nor did it fix itself on Scotland. Only in England did it persist. Here the royal power was strong, and in time, through the decay of other forms of trial it became the method of deciding questions, not only cognizable by royal inquest, but between subject and subject as well. Eventually, as we know, it became the bulwark of liberty and the national boast. This is something very different from the popular and general accepted conception of the origin of jury trial.

The work has a good index and is rendered serviceable to the investigator by a list of authorities and a synoptic table of sources from the fifth century down to the seventeenth.

To the lawyer, the work renders accessible the origins of many legal institutions hidden either in the period previous to ordinary texts, or the equally sealed foreign treatises, while to the student of the period, it gives the legal and political framework of society and the structure upon which it grew, in a scholarly and at the same time most interesting way.

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A History of the English Poor Law in Connection with the State of the Country and the Condition of the People. By SIR GEORGE NICHOLLS, K. C. B. New edition containing the revisions made by the author and a biography by H. G. Willink. Two volumes. Pp. lxxviii, 384; vii, 460. Price, $10.00. New York: G. P. Putnam's Sons, 1898.

This new edition of Nicholls' "History of the English Poor Law" will be thoroughly appreciated by a large circle of readers, including students of several of the social sciences. It is already well known as a standard work of great value, but has been for several years comparatively inaccessible. The present edition is moreover a fine piece of bookmaking and with the third volume, bringing the history down to date, to be written by Mr. T. Mackay, and to be ready by the end of this year or early in 1899, will constitute a work indispensable to those interested in the social history of the century.

Sir George Nicholls was peculiarly fitted for the preparation of the work under review. No other man had been associated with the administration of the English poor laws for so long a time or had occupied so many important posts connected with the execution of those laws at the time when the modern poor law was being reconstructed to meet the needs of the industrial changes of this century. Nicholls, while a resident of Southwell, where in 1821 he became overseer of the poor, had succeeded in bringing about reforms in those trying days of reckless expenditure for the poor throughout England. In 1821 the amount expended in Southwell was over $3.00 per capita of the population, or about $10,000 per annum. By 1823-24, through the introduction of the workhouse and the collection of poor rates from all classes of the population, Nicholls succeeded in reducing the total amount to $2500, where it